

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
MERCER RANCHES, INC., )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB No. 78-198  
78-207

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a permit to appropriate public groundwater, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (Presiding) at a formal hearing in Pasco on June 6, 1979.

Appellant was represented by its attorney, Dwight A. Halstead; respondent was represented by Laura E. Eckert, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these:

FINDINGS OF FACT

I

Appellant is a family-owned corporation engaged in farming in the Horse Heaven Hills. On August 3, 1972 appellant applied for appropriation of groundwater (Application No. G3-20394) for the irrigation of 500 acres in Klickitat County. On January 30, 1973 respondent advised appellant that no action would be taken on the application because a "hold" was placed on further appropriation of water in the location requested. This "hold" applied to irrigation rather than domestic or stockwatering use.

On May 31, 1977, respondent began processing permit applications after it ascertained that more water than earlier thought was available.

II

In November of 1977, Initiative 59 (The Family Farm Water Act, ch. 90.66 RCW) passed and became effective on December 8, 1977.

III

On August 15, 1978, respondent issued a Report of Examination/Order on appellant's application, recommending approval of the issuance of a permit including the following "Family Farm" provision:

. . .

That portion of this authorization relating to irrigation is classified as a Family Farm Permit in accordance with Initiative Measure No. 59. This means the land being irrigated under this authorization shall comply with the following definition: Family Farm -- a geographic area including not more than two thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than two thousand

acres of irrigated agricultural lands in the State of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the land being irrigated under this authorization must continue to conform to the definition of a family farm.

The provision allows the use of water by appellant in perpetuity, provided the 500 acres authorized for irrigation remain in "family farm" status (See RCW 90.66.040(1)). Mercer Ranches appealed, contending that its pre-December 1977 application date requires that a permit should be issued without the "family farm" provision.

## IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

## CONCLUSIONS OF LAW

# I

The Family Farm Water Act is an additional requirement to the existing water code and permit issuance requirements. RCW 90.66.030.

## II

"Existing rights" to withdraw and use public waters are not affected by the Act:

"Nothing in this chapter shall affect any right to withdraw and use public water if such rights were in effect prior to the effective date of the act, and nothing herein shall modify the priority of any such existing right." RCW 90.66.020.

Permits for the withdrawal of public waters for the purpose of irrigating agricultural lands issued after the effective date of the

1 Act must be issued in accordance with the Act. RCW 90.66.030. The  
2 Act requires that all permits issued for the withdrawal of public  
3 waters for the purpose of irrigating agricultural lands be classified  
4 and issued with certain conditions. RCW 90.66.050. "Family farm  
5 permits" are limited to the use of water withdrawn for irrigation of  
6 agricultural lands on lands qualifying as a "family farm".  
7 RCW 90.66.050(1). A "family farm" is a geographic area of not more  
8 than 2,000 acres of irrigated agricultural lands, the controlling  
9 interest in which is held by a person having a controlling interest in  
10 no more than 2,000 acres of irrigated agricultural lands under rights  
11 acquired after the effective date of the Act. RCW 90.66.040(1).

### 12 III

13 Appellant's permit to withdraw and use public water was issued  
14 after the effective date of the Act and such right was not existing  
15 before the effective date of the Act. Accordingly, the provisions of  
16 the Act apply to the permit issued to appellant and respondent's  
17 action should be affirmed.

### 18 IV

19 Any Finding of Fact which should be deemed a Conclusion of Law  
20 is hereby adopted as such.

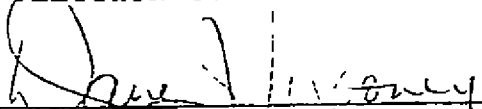
21 From these Conclusions the Board enters this

### 22 ORDER

23 The action of the Department of Ecology is affirmed.  
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1 DATED this 29<sup>th</sup> day of June, 1979.

2 POLLUTION CONTROL HEARINGS BOARD

3   
4 DAVE J. MOONEY, Chairman

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6 CHRIS SMITH, Member

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8 DAVID AKANA, Member  
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26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER